

REMARKS

The Applicant had inadvertently listed cancelled claim 35 as still pending in the application. Claim 35 submitted in the last response was not intended to be a new claim. The Applicant submits that the last claim presently in the application is claim 44. The Applicant has added claims 45-57 starting in sequence from claim 44.

The Examiner rejected claims 1 and 2 under 35 U.S.C. §102(b) as being anticipated by Bille. The Examiner rejected claims 1-4 and 40 35 U.S.C. §103(a) as being unpatentable over Bille in view of Knopp. The Examiner rejected claims 32, 33, 36-38, 42 and 45 under 35 U.S.C. §103(a) as being unpatentable over Bille in combination with Klopotek. The Examiner rejected claims 1, 40, and 42 under 35 U.S.C. §103(a) as being unpatentable over Knopp in view of Bille in further view of L'Esperance. The Examiner rejected claims 37 and 42-44 under 35 U.S.C. §103(a) as being unpatentable over Bille in combination with Klopotek and L'Esperance. The Examiner states that Bille discloses denaturing tissue. The Applicant respectfully traverses this contention.

Bille discloses applying a large amount of energy in the range of 10 megawatts to either fully ablate tissue, or modify tissue into a semi-liquid state. The claims recite denaturing tissue not ablating tissue. The claimed process provides enough energy to change the helical tissue structure without creating damage that causes the body to repair the denatured area. Changing the helical structure modifies the refractive power of the cornea. This is to be distinguished from Bille which discloses changing the tissue into a semi-liquid state. The Applicant contends that changing the tissue to a semi-liquid state will cause the body to repair the tissue back to the original state. This will cause regression in the change of refractive power. Bille does not disclose or suggest to merely denature the tissue.

The Applicant is enclosing an article pulled from the web that defines denaturation (see page 3). The definition states that denaturation breaks H bonds and effects the secondary structure of protein, but not the primary structure. The primary structure includes amino acids that contain C-H bonds. In sum the definition of denature includes the breaking of H bonds but not C-H bonds. Bille does not merely denature because the process described in this reference breaks C-H bonds. This is clearly emphasized in the following passage from Billie:

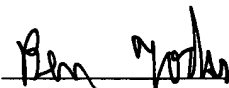
"The most important bonds which need to be broken in order to effectively modify living tissue are the C-N (Carbon-Nitrogen) bonds, the C-C (Carbon-Carbon) bonds and **the H-C (Hydrogen-Carbon) bonds.**" (emphasis added)

Bille discloses a process that is beyond denaturation of tissue. For this reason the Applicant submits that Bille neither anticipates nor renders obvious in combination with the other references the claims of the above entitled application.

In view of the above it is submitted that the claims are in condition for allowance. Reconsideration of the rejections is requested. Allowance of claims 1-34 and 36-59 at an early date is solicited.

Respectfully submitted,
IRELL & MANELLA LLP

Dated: September 23, 2004


BEN J. YORKS
Reg. No. 33,609

840 Newport Center Drive, Suite 400
Newport Beach, CA 92660
949-760-0991

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 23, 2004.

 9-23-04
Catherine M. Sanders Date